



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:12 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. An agent of the landlord, D.S., (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenants by way of registered mail on August 30, 2017. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on September 04, 2017, the fifth day after their registered mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit at 12:15 p.m. on August 02, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice, identifying \$1,500.00 in rent owing for this tenancy, was deemed served to the tenants on August 07, 2017.

At the outset of the hearing the landlord testified that the tenants appeared to be moving out of the rental unit when the landlords visited the rental unit on October 03, 2017. The landlord testified that the tenants paid \$1,500.00 towards the total amount owing on the 10 day Notice on September 01, 2017, and that the landlord gave a receipt to the tenants indicating that they were accepting the rent for “use and occupancy only”. The landlord requested to amend their application for a monetary award from \$4,575.00, to \$3,000.00, to reflect the tenants’ payment on September 01, 2017.

The landlord’s amended application for a monetary award of \$3,000.00, that the landlord requested in her testimony, is for the following items:

Item	Amount
Late fee for August 2017 rent	\$25.00
Balance of unpaid September 2017 Rent	1,450.00
Late fee for September 2017 rent	25.00
Unpaid October 2017 Rent	1,500.00
Amended Requested Monetary Order	\$3,000.00

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave written evidence that this tenancy began on September 28, 2016, with a monthly rent of \$1,500.00, due on the first day of each month. The landlord testified that they currently retain a \$750.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated August 02, 2017, with an effective date of August 15, 2017, was included in the landlord’s evidence.

A copy of a tenant ledger showing the rent owing and paid during this tenancy was also included in the landlord’s evidence.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and testimony, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on August 15, 2017, the effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by August 15, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 7(d) of the *Residential Tenancy Regulations* allows for a \$25.00 administrative fee for late payment of rent.

Based on the landlord's undisputed written evidence and sworn testimony, I find the landlord is entitled to a monetary award of \$3,000.00 for unpaid rent owing for this tenancy for September 2017 and October 2017 as well as for late fees owing for August 2017 and September 2017. As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenants.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and late fees, retain the security deposit and to recover the filing fee from the tenants:

Item	Amount
Late fee for August 2017 rent	\$25.00
Balance of unpaid September 2017 Rent	1,450.00
Late fee for September 2017 rent	25.00
Unpaid October 2017 Rent	1,500.00
Filing Fee for this application	100.00
Less the Security Deposit	-750.00
Total Monetary Order	\$2,350.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 05, 2017

Residential Tenancy Branch